

**To:** Ms. Emma Reilly  
Human Rights Officer  
Office of the United Nations High Commissioner  
for Human Rights (OHCHR)

**Date:** 10 April 2017

**From:** Katrina Campbell   
Alternate Chair  
Ethics Panel of the United Nations (EPUN)

**Phone:** (212) 297-5044

**Subject:** Preliminary review of your retaliation complaint

**File:** II.21.b.

This memorandum will summarize for you my conclusion regarding the complaint of retaliation that you filed with the UN Ethics Office in July 2016.

#### Background

You joined the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 6 January 2012 as a P-3 human rights officer. Since then, you were assigned to several temporary positions (which is a common custom in OHCHR), some at the P-4 level. You remain in the same fixed-term post in which you started.

You originally filed a request for protection from retaliation (Retaliation Complaint) with the UN Ethics Office (UNEO) on 15 July 2016. At that time, the applicable SGB was ST/SGB/2005/21, *Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations* (Old Retaliation Policy). The Director of UNEO considered your complaint and advised you on 7 October 2016 that you had not presented a *prima facie* case of retaliation on any of the allegations presented. On 25 October 2016, you asked the Director of UNEO to reconsider her decision. UNEO invited you to submit additional information. While this process of submission and review was underway, two things happened:

1. On 20 January 2017, the Secretary-General promulgated ST/SGB/2017/2, *Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations* (New Retaliation Policy), and abolished the Old Retaliation Policy; and
2. In January 2017, you accused the Ethics Office of leaking documents related to this Retaliation Complaint.

As a result of the above, on 30 January 2017, the Director of UNEO referred the complaint to me as the alternate Chair of the Ethics Panel of the United Nations (EPUN), citing the New Retaliation Policy, Section 7.7, which provides:

If the Director of the Ethics Office is of the opinion that there is an actual or potential conflict in his or her reviewing a request for protection against retaliation, he or she shall decide on the possibility of referring the request to an alternative reviewing body, including the alternate Chair of the Ethics Panel of the United Nations.

Upon receipt of this referral, I reviewed the existing file and gathered additional information between 6 February and 21 March 2017.<sup>i</sup> During this review, I interviewed you and one witness; I also discussed the case with your representative, Beatrice Edwards of the Government Accountability Project. I did not, however, contact officials of OHCHR, as you specifically requested that I not do so.

### Standard of Review

Because of the timeframes involved, there are two retaliation policies which are potentially relevant to this complaint. Thus, I first had to consider whether and how each would apply. I concluded that the best course of action is to apply the substantive elements of the Old Retaliation Policy, but the administrative and procedural elements of the New Retaliation Policy. The goal is to afford you the procedural benefits of the new policy to the extent necessary; but acknowledge that the substantive standards that must be applied are those that existed at the time of your complaint.

The Old Retaliation Policy states:

Protection from retaliation is provided to a staff member who: a) reports the failure of a staff member to comply with his or her obligations under the Charter, Staff Regulations and Rules, other relevant administrative issuances, or the Standards of Conduct for the International Civil Service. The report must be made as soon as possible and not later than six years after the individual becomes aware of the misconduct. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred; or b) cooperates in good faith with a duly authorized investigation or audit.<sup>ii</sup>

The function of the Ethics Office regarding retaliation complaints is:

- a) To receive complaints of retaliation or threats of retaliation;
- b) To keep a confidential record of all complaints received;
- c) To conduct a preliminary review of the complaint to determine if (i) the complainant engaged in a protected activity; and (ii) there is a *prima facie* case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.<sup>iii</sup>

### Analysis

UNEO sent you an extensive memorandum on 7 October 2016 which analyzed each aspect of your complaint. Having now conducted a fully independent review of your complaint, including of the additional information gathered by UNEO during their review both of your original complaint, and your request for reconsideration, I agree with UNEO's conclusions as stated in their memorandum to you. Thus, it is not necessary to restate the analysis and conclusions here. However, I do wish to reiterate and/or expand on a few matters.

### Protected Activities

Every UN manager knew names were being handed to Beijing and did nothing. So it must be ok?!

**Information sharing with a Member State.** You asserted that you reported misconduct on several occasions regarding a staff member, ET (only initials are provided for the sake of confidentiality), who, you said, instructed staff to share information with a particular Member State regarding whether members of a list of named human rights defenders would be attending the Human Rights Council with that Member State's delegation. I agree with UNEO that these were not reports of misconduct. Such conduct, even as alleged, was within the authority of the staff member, was well-known to senior leaders in OHCHR, and apparently was not considered misconduct by any of those senior leaders. Indeed, even as the matter became public information (apparently due to this ongoing dispute),

I had identified specific rules that were broken. But management cover-ups carry more weight.

OHCHR seems to have taken no steps against the accused staff member because of this act. The Office of Investigation and Oversight Services (OIOS), when presented with your complaint, apparently did not investigate it (to my knowledge). It seems that in spite of the matter being well known within OHCHR, no one reasonably thought that this could constitute a violation of UN rules. Therefore, although you may have made the reports in good faith, you did not submit information or evidence to support a reasonable belief that *misconduct* had occurred, which is required by both retaliation policies as a prerequisite to any finding that you engaged in a protected activity.

**Other alleged protected activities.** You did engage in several protected activities, as outlined in UNEO's memorandum. In addition to the activities noted in that memo, I consider as a protected activity your cooperation with an OIOS audit of OHCHR in 2013, during which you reported concerns that ET allegedly had accepted favours with a financial value from a Member State delegation, and that he had engaged in unethical recruitment practices. However, I believe there is no evidence that you suffered a detrimental action because of this protected activity, for the same reasons that UNEO found there were no detrimental actions against you in retaliation for your other reports regarding ET.

**Alleged Detrimental Action: CM's refusal to hire you for a one-month temporary post starting in December 2015.**

I concur with the UNEO's analyses and conclusions regarding your complaints against MD, CM, and NV.

The information which follows is a summary of my additional analysis regarding your complaint that CM refused to hire you for a temporary appointment starting in December 2015, in retaliation for our written report of 29 July 2015 to the High Commissioner for Human Rights of an alleged improper recruitment led by MD and CM. The complaint was a protected activity, but the additional information I gathered confirms that there is not a *prima facie* case that this protected activity was a contributing factor to a detrimental action against you.

On 29 July 2015, you complained of harassment and abuse of authority to the High Commissioner. Specifically, you complained that your non-selection for a one-month temporary post, 15-HRI-OHCHR-40485-R-GENEVA, was the result of misconduct in the recruitment process by MD and CM. You also filed a request for management evaluation (RME) on 1 September 2015 regarding the same matter.

You stated that the OHCHR Chief of Staff, MAA, told you that news of your complaint had been shared with MD and CM. Thus, it appears that they knew that you complained in July 2015 to the High Commissioner. The Management Evaluation Unit (MEU) informed you that on 2 September 2015, MEU was advised that the post which was the subject of the request had been cancelled, due to a decision to reallocate the post from Geneva to New York. They therefore denied your RME.

You stated that you were told by MAA that MD and CM had been approached by the Executive Office, and the decision was taken to withdraw the post prior to your RME.

JS, a section chief for the Human Rights Economic and Social Issues Section within DESIB, said in her witness statement that beginning in early September 2015, after you filed the RME, you were vilified in the corridors of DESIB. (JS was unaware of the other complaints that you filed). JS said she overheard negative comments about you, but not from the staff members you have accused of misconduct or retaliation, with one exception. The one exception was that she said that NV said that he heard you were not a team player, and that you were rude and aggressive; and he asked JS if she observed this kind of behaviour from you. This was in the context of gathering information for a performance review.

In the fall of 2015, JS was the hiring manager for a one-month temporary position to which you had applied. JS said she intended to extend the position into January 2016. She said that she had asked the staff member on her team who was responsible for recruitment, IG, to ensure funding was available, which she said IG did. JS stated that she was planning to hire you for the position, given that you had worked for her on a short-term assignment earlier in 2015, and she felt that you had done a very good job.

JS said that CM told IG that you would not be hired. The explanation she said CM gave for the non-hiring decision was that there were funding issues, and also technical issues with extending a post from December 2015 into 2016. Indeed, JS said that the position ultimately was not filled, but was re-advertised in 2016 after it was modified and aligned with other duties.

You wrote to CM on 20 November 2015, requesting an explanation for why funding was confirmed for the position, but once you became the preferred candidate, the position went away. CM responded via email, telling you that it had been decided that the position would not be pursued in 2015. He said the funding had not yet been approved, and that if it were approved by the Fifth Committee of the General Assembly, it would be funded as of 2016 instead and candidates would be sought at that time. He explained that the activity was determined not to be a priority for 2015, given the funding crisis, the nature and scope of the work, the pending funding, and the timeline for the activity. Notably, CM copied Deputy High Commissioner FP on his response.<sup>iv</sup>

You assert that this explanation was false; a ruse to hide CM's true intention, which was to refuse you the position. Indeed, JS also was suspicious. JS said that someone on her team had confirmed funding availability, only to be told once your selection became known that there were funding and technical problems. In her witness statement, she said that she believed that you would not get that job (or any other jobs in DESIB) due to your RME complaint about the recruitment process.

However, CM gave both you and JS the same explanation, which reasonably reflected the real possibility (confirmed by JS) that funding could have been identified as "available", even though it had not actually been approved by the governing body (the Fifth Committee) for the activity in question. His explanation that the activity related to a report mandated for the summer of 2016, and therefore should be funded in 2016, was reasonable, and not refuted by any *factual* information.

Further, to reach the conclusion that CM was trying to retaliate against you, one must also conclude that FP was an accomplice to CM's retaliatory action. Were CM's explanation false, it would not make sense for him to have voluntarily included FP on the email, thus openly lying with a senior official of OHCHR in carbon copy.

As for the alleged comments by NV, it was within his role as a human resources manager to seek feedback regarding your performance. Apparently, he had heard that you were not a team player, and were rude and aggressive, and he sought feedback on these matters. While not pleasant, there is no allegation that NV himself took some kind of detrimental action against you. In any event, such inquiries or comments could not, by themselves, be considered detrimental actions.

#### Conclusion

I, therefore, conclude that there is no *prima facie* case of retaliation presented here.

This conclusion should not be read to suggest that OHCHR staff have properly followed all procedures over the years. You and/or others may have valid concerns about recruiting practices or other matters. Examination of such issues is simply outside the purview of the ethics offices.

NV denied, in writing, ever making such inquiries, because it would have been "inconceivable" for a human resources manager to act with such bias... But UN Ethics Officers don't consider inconvenient facts.

The UN position is, once again, that the problem is not the policy of handing names to Beijing, but that I keep trying to stop it. It is not "better" for the victims of the policy to continue to have their safety put at risk.

### Recommendation

Since 2013, you lodged at least 10 different complaints with several different officials about, essentially, three matters. A staff member is, of course, obligated by the Staff Regulations and Staff Rules to report misconduct to the organization via the proper channels. However, the decision whether to investigate and take corrective action is not within the authority of the staff member. It is quite possible that officials of OHCHR and/or OIOS decided not to proceed with an investigation of certain complaints for very good reasons of which they did not inform you, because they were not obligated to do so. It would have been better for you to have lodged your complaint with the proper authority, and then have left the matter in the hands of that authority to decide on next steps.

I also believe that it would have been better for management of OHCHR to have responded directly to you in 2013 regarding your complaints about ET, so that you would not have continued to unnecessarily raise the matter over the years. I have not seen where this was done, although it is possible that I just have not seen all relevant information.

It is never easy to move forward after a retaliation complaint has been made, especially after one has lodged so many complaints against so many staff. I recommend that you make the effort to work with your current supervisor, the Office of the Staff Counsellor (as needed), and the Office of the Ombudsman to consider how to move beyond this situation in a manner that allows healing for you and everyone affected.

I am sure this is not the result you hoped for. However, it reflects my review of the information presented and further research of the issues.

### Next Steps

As per Section 9.1 of the New Retaliation Policy, you may request that your complaint be reviewed further by writing to the Alternate Chair of EPUN. In this case, since I am the Alternate Chair, I would recuse myself from further involvement and the remaining EPUN members (minus Elia Armstrong) will decide who will review the matter instead. Should you decide to request further review, please let me know and I will forward the request to the EPUN members for a decision on the way forward.

Please let me know if you have any questions.

cc: Ms. Beatrice Edwards  
International Director  
Government Accountability Project  
(representing Emma Reilly)

<sup>i</sup> *UNEO recused itself from providing any assistance to me in this matter, other than to provide the file (partially in hard copy, but primarily via a CD-ROM) and copies of specific documents as I requested them.*

<sup>ii</sup> *Old Retaliation Policy, Section 2.1.*

<sup>iii</sup> *Old Retaliation Policy, Section 5.2.*

<sup>iv</sup> *See email titled "Question", dated 20 November 2015 between you and CM.*